

SUPERIOR COURT OF CALIFORNIA

County of San Diego

DATE: March 29, 2006 DEPT. 71 REPORTER A: Peter Stewart CSR# 3184
PRESENT HON. RONALD S. PRAGER REPORTER B: CSR#
JUDGE

CLERK: K. Sandoval

BAILIFF: L. Wilks

REPORTER'S ADDRESS: P.O. BOX 120128

SAN DIEGO, CA 92112-4104

**JUDICIAL COUNSEL
COORDINATION PROCEEDINGS
NO. JCCP 4221**

**TITLE [Rule 1550(b)]
NATURAL GAS CASES 1,11,111, AND 1V**

INDEXING

TENTATIVE RULING: POORMAN DOUGLAS

The Motion of Class Plaintiffs for a Protective Order precluding Defendant CMS Energy Resources Management Co. aka CMS Marketing Services and Trading Co.'s from obtaining confidential information from El Paso class action settlement administrator, Poorman-Douglas, is GRANTED.

The Court finds the key issue here is whether to uphold the promises agreed to in the Confidentiality Agreement executed in the El Paso class action. It is undisputed that the information sought by CMS is relevant to the instant action. However, the Court is persuaded that CMS is prohibited from obtaining the information from Poorman-Douglas based on the unequivocal language of the Confidentiality Agreement. The Court is further guided by PUC's characterization that the information constitutes confidential information absent authorization from the individual entities.

The information sought by Defendants was given to Poorman-Douglas for the sole purpose of administering the settlement in the El Paso matter. The Confidentiality Agreement is plain and

expressly prohibits the use of the information obtained thereunder in any way other than to facilitate the El Paso settlement. (Ex. E) In addition, an amended order concerning the El Paso settlement and the production of information by way of the claims forms posted on the internet stated “Information and documents submitted by individual members of the Non-Core Natural Gas Subclass will be treated as confidential, and will not be disclosed to any person except as reasonably necessary to process the claims. (Ex. I, p. 2; see also Exs. J-N)

In opposition to Plaintiffs’ request for a protective order, Defendant CMS Energy Resources Management Co., aka CMS Marketing Services and Trading Co., sets forth its position that the information is relevant to the instant action and it is entitled to disclosure. It appears, however, that relevancy is not in dispute.

In response to Plaintiffs main arguments that the requested information is not discoverable through Poorman-Douglas, Defendants assert the orders are subject to “further order of the court” and the Court may invoke its inherent power to amend its prior orders. Other than general law that allows discovery before the class is certified, Defendants offer no authority that allows the Court to “further order” the confidential information disclosed. And Defendants offer no argument sufficient enough to persuade the Court to renege on the terms of the Confidentiality Agreement.

Defendants also argue Plaintiffs have waived their right to object about the request since Plaintiffs put the matter at issue in the class action complaint. This argument is also unpersuasive in light of the confidentiality agreement. The authority cited in support of CMS’s position on waiver is distinguishable. Defendant CMS attempts to analogize *Vinson v. Superior Court of Alameda County* (1987) 43 Cal.3d 833, 842, which involved sexual harassment claims alleging mental and emotional distress. When the defendant attempted to discover information on the plaintiff’s mental and emotional history, plaintiff objected based on privacy. The court overruled the objection stating the plaintiff had put her mental and emotional history at issue.

Here, it is important to note CMS is asking a third party, Poorman-Douglas, to breach its promise to the non-core class members to keep the requested information confidential. *Vinson* may be more persuasive if CMS had subpoenaed an absent non-core class member requesting the same information. In that case, the absent non-core class member may not be able to successfully argue the information is a protected trade secret – if in fact, the absent non-core class member has put that information at issue in the Indexing cases.

Based on the unequivocal promises to parties in the El Paso settlement and the assurances from the Court that the information will be kept confidential, the Court GRANTS Plaintiffs’ request for a protective order and precludes Defendant CMS from obtaining the customer lists and related information from Poorman-Douglas.